THE HAPPY WORLD LTD. v. ESTATE & TRUST AGENCIES (1927) LTD. & ANOR.

[O.C.J. (Tan Ah Tah J.) March 5, 1958]

[Singapore — Suit No. 989 of 1955]

Landlord and Tenant — "Premises" let under lease providing progressive increases in rent — Provision sanctioned by Increase of Rent (Restriction) (Amendment) Ordinance, 1941 — Whether right to receive progressive increases of rent taken away by Control of Rent Ordinance, 1947 — Interpretation and General Clauses Ordinance (Cap.2), s.14(c) — "Contrary intention".

By a lease dated August 5, 1936 the trustees of the will of Tan Tye decd. demised two pieces of land situated at Mountbatten Road and Geylang Road to one Lee Geok Eng for the term of 20 years and 10 months from August 1, 1936. The rent reserved by the lease was $100 monthly during the first ten months of the term, $450 monthly during the year next following the first 10 months, $500 monthly during the four years next following, $600 monthly during the five years next following, $700 monthly during the five years next following and $800 monthly during the last five years of the term. On October 2, 1936 Lee Geok Eng assigned his rights to the Happy World Ltd. On August 1, 1939 the rent payable by plaintiff company was $500 a month. The Increase of Rent (Restriction) (Amendment) Ordinance, 1941, added a proviso to section 6(1) of the Increase of Rent (Restriction) Ordinance, 1939, which provided that the subsection (which made it unlawful for a landlord to increase the rent of premises without an order of the Board) shall not apply to increases of rent under a written tenancy agreement or lease executed before August 1, 1939 which provided for periodical or progressive increases in the rent of such premises. The Control of Rent Ordinance, 1947, which repealed the Increase of Rent (Restriction) Ordinance, 1939, had no reference to progressive increases in rent.

The premises were used as an amusement park and the plaintiff company sought a declaration that the two pieces of land were premises within the meaning of the Control of Rent Ordinance. They also claimed a refund of a portion of the rents paid by them to their landlords on the ground that the landlords have received increases of rent which it was not lawful for them to receive.

Held: (1) the two pieces of land were premises within the meaning of the Control of Rent Ordinance;

(2) the Control of Rent Ordinance, 1947, put an end to the landlords' right to receive progressive increases of rent and the landlords should refund all sums which they have received in excess of the standard rent of $500 a month.

Case referred to:—

(1) *Woozley v. Woodall Smith*, (1949) 2 All E.R. 1055.

CIVIL SUIT.

C. H. Smith for the plaintiffs.

H. E. Cashin for the 1st defendants.

K. E. Hilborne for the 2nd defendant.

Cur. Adv. Vult.

Tan Ah Tah, J.: — The plaintiff company in this action are seeking a declaration that two pieces of land situated at Mountbatten Road and Geylang Road, Singapore together with the buildings erected thereon constitute premises within the meaning of the Control of Rent Ordinance and they also claim a refund of a portion of certain rents which they, as tenants, have paid to their landlords, the 1st defendant company, on the ground that the landlords have received increases of rent which it was not lawful for them to receive.

The two pieces of land belonged to one Tan Tye, who died many years ago. By a lease dated the 5th August 1936, Yap Liang Neo and Tan Yew Ghee, the then trustees of the will of Tan Tye deceased, demised the two pieces of land to one Lee Geok Eng for the term of twenty years and ten calendar months from the 1st August 1936. The rent reserved by the lease and covenanted to be paid by Lee Geok Eng was as follows: $100 monthly during the first ten months of the term, $450 monthly during the year next following the first ten months, $500 monthly during the four years next following, $600 monthly during the five years next following, $700 monthly during the five years next following and $800 monthly during the last five years of the term. The rent for the first twelve months of the term was to be paid in advance upon the execution of the lease and the rent for the remaining period of the term was to be paid monthly on the first day of every month each such payment being in respect of the rent of the month immediately preceding. There was also a covenant on the part of Yap Liang Neo and Tan Yew Ghee to permit Lee Geok Eng to construct or erect any buildings or structures on the land subject to his obtaining the approval of the Municipal authorities and complying with all laws and regulations relating thereto, and to alter any buildings or structures for the purpose of complying with any Government or Municipal requirements.

On the 2nd October 1936 Lee Geok Eng, having obtained the licence and permission of Yap Liang Neo and Tan Yew Ghee to do so,

assigned all his rights under the lease to the plaintiff company. Subsequently, on the 1st November 1937, the first defendant company were appointed trustees of the estate of Tan Tye deceased in place of Yap Liang Neo and Tan Yew Ghee and the land was vested in the first defendant company subject to the lease. In the events that happened, therefore, the first defendant company became the landlords of the plaintiff company.

While the action was pending the second defendant, who is one of the beneficiaries of the estate of Tan Tye deceased, made an application to be added as a party to the action. On this application it was ordered that he be added as the second defendant in the proceedings at his risk as to costs.

It is not disputed that when the lease was entered into the land was vacant land. The plaintiff company had been formed for the purpose of carrying on the business of an amusement park. Some time before the war, in pursuance of this object, the plaintiff company erected numerous buildings on the land. These buildings comprised restaurants, cinemas, stalls, a cabaret, a stadium and other structures such as are commonly found in amusement parks. According to the evidence they were erected with the permission of the landlords.

It is convenient to deal at this stage with the meaning of the term "premises" in the Control of Rent Ordinance. Omitting words which are not material to this case the term "premises," as defined in the Ordinance, means any dwelling house, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work and includes any land whereon any such building is or has been erected with the consent of the landlord.

Counsel for the defendants do not dispute the fact that persons are employed or work in the buildings which have been erected on the land. Their contention is that, in view of the definition of the term "premises," only those parts of the land on which buildings have been erected are protected by the Ordinance; the other parts of the land which have no buildings standing on them are not protected. In considering this argument, it is necessary, in my view, to have regard to the character of the buildings which have been erected on the land and the use to which the land and buildings have been put. The plan which was admitted in evidence gives a very good indication of what the amusement park looks like and shows buildings spread out over the site. These buildings are such as one would expect to find in an amusement park in Singapore. It is common ground between the parties that the City Fire Brigade insisted upon the maintenance of an open garden inside the park and that all the roads within the park were laid out in accordance with the instructions and regulations of the City Fire Brigade. In the planning of an amusement park it is obviously essential that there should be roads, lanes and passages for the use of persons seeking entertainment or recreation in the park. It is also essential that car parks should be provided for the use of the patrons of the park. Having regard to all these considerations, I have reached the conclusion that the whole of the land has been used as an integral unit for the purposes of the amusement park. It follows, therefore, that in my opinion, the whole of the land constitutes "premises" within the meaning of the Ordinance and comes within its protection.

Another argument based on the definition of the term "premises" was put forward by counsel for the second defendant. He contended that as no evidence had been given to show that the approval of the Municipal authorities had been obtained for the erection of the buildings it could not be said that the landlords had consented to their erection. There are two observations to be made on this argument. In the first place, the Ordinance requires the consent of the landlord only and of no other person or authority. This is in itself, in my opinion, conclusive on the point, as, according to the evidence, which I have already referred to, the buildings were erected with the permission, which means the consent, of the landlords. Secondly, it is inconceivable that the Municipal authorities would have allowed the buildings, some of which were erected before the war, to remain on the land for so many years unless their approval had been obtained. It will be remembered that the City Fire Brigade considered the question of the provision of an open space in the park and insisted that the garden inside the park should be maintained as an open garden. The clear inference to be drawn from these facts is that the Municipal authorities have approved the erection of the buildings. If, therefore, it is necessary (which, in my view, it is not) to show that the approval

of the Municipal authorities for the erection of the buildings has been obtained, I think that that fact has been sufficiently established by the evidence. In my opinion, the argument put forward on this point by counsel for the second defendant is untenable.

I now turn to deal with the plaintiff company's claim for a refund of money which they allege has been paid in excess of the rent lawfully receivable by the first defendant company. In dealing with this matter it is necessary to consider the earlier legislation on the subject of rent restriction and rent control.

Section 6 (1) of the Increase of Rent (Restriction) Ordinance No. 35 of 1939 provided as follows:

"6(1) From and after the first day of August, 1939, it shall be unlawful for any landlord or sub-landlord to —

(a) receive or recover the increased rent of any premises to which this Ordinance applies, where the rent has been increased since the first day of August, 1939; or

(b) to increase the rent of any premises to which this Ordinance applies without an order of the Board."

It should be stated at this stage that the landlords in this case have never at any time applied to the Rent Conciliation Board for an order fixing the rent of the premises in question.

On the 1st August 1939 the rent payable by the plaintiff company was $500 per mensem and if this section had remained unamended the first defendant company would not have been entitled to increase the rent in accordance with the terms of the lease. However, in 1941 a proviso was added to section 6(1) by the Increase of Rent (Restriction) (Amendment) Ordinance No. 30 of 1941. The proviso was in the following terms:

"Provided that this subsection shall not apply to increases of rent where premises were let under a written tenancy agreement or lease, executed before the first day of August, 1939, which provides for periodical or progressive increases in the rent of such premises."

Section 6 (1) of the Increase of Rent (Restriction) Ordinance No. 35 of 1939 with its proviso remained in force until the 8th September 1947. On the 1st June 1947, because the restriction on increases of rent under the lease had been removed by the enactment of the proviso, the rent was lawfully increased to $700 per mensem.

On the 8th September 1947 the Control of Rent Ordinance No. 25 of 1947 came into force, repealing the Increase of Rent (Restriction) Ordinance No. 35 of 1939 and the Increase of Rent (Restriction) (Amendment) Ordinance No. 30 of 1941, which was read as one with it.

Section 3 (1) of the Control of Rent Ordinance No. 25 of 1947 provides as follows:

"Save as hereinafter in this Ordinance provided it shall be unlawful for any landlord to increase or attempt to increase or to receive or recover a rent in respect of any tenancy of premises in excess of the rent fixed by an order of the Board, or if no order has been made, in excess of the standard rent."

It is important to observe that the phrase "periodical or progressive increases in the rent" is wholly absent from this Ordinance. There is no reference in it whatsoever to the subject of progressive increases in the rent nor is there a proviso similar to the proviso to section 6 (1) of Ordinance No. 35 of 1939.

Counsel for the first defendant company contended that the right to receive progressive increases in the rent under the lease remained unaffected and cited section 14 (c) of the Interpretation and General Clauses Ordinance (Cap. 2) in support of his contention.

Section 14 (c) provides as follows:

"Where a written law repeals in whole or in part any other written law, then, unless the contrary intention appears, the repeal shall not —

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed."

If it is true to say that the right to receive $700 per mensem accrued under Ordinance No. 30 of 1941 and not under the lease, (and counsel for the plaintiff company did not dispute this proposition) I am of opinion that the phrase "unless the contrary intention appears" in section 14 (c) provides the answer to the question whether the right to receive progressive increases of rent remained unaffected by the coming into force of the Control of Rent Ordinance No. 25 of 1947. It is to be observed, first, that the language of section 3 (1) of the last mentioned Ordinance is clear and unequivocal, secondly, that there is no reference in it to periodical or progressive increases of rent, thirdly, that there is no reference to tenancy agreements or leases executed before the 1st August 1939 or any other date and fourthly, that the language of section 3 (1) is not qualified in any way, whether by a proviso or in any other manner. I have reached the conclusion, after taking all these matters into consideration,

that the contrary intention sufficiently appears within the meaning of section 14 (c) of the Interpretation and General Clauses Ordinance. In my judgment the right to receive progressive increases of rent was taken away from the first defendant company by the Control of Rent Ordinance No. 25 of 1947. Since the 8th September 1947 it has become unlawful to receive such rents. In this connection I would add that there is no question of the Ordinance operating retrospectively. All progressive increases of rent received by the first defendant company during the period when it was lawful to receive such rents would be retained by them. For example, if on the 1st July 1947, the first defendant company received the sum of $700 from the plaintiff company in respect of the rent for June 1947, the first defendant company would, in my opinion, be entitled to retain that sum. But on the 1st October 1947 it would definitely have been unlawful to receive the sum of $700 in respect of the rent for September 1947.

Counsel for the first defendant company also put forward an argument based on the definition of "standard rent" in the Control of Rent Ordinance No. 25 of 1947. In that Ordinance "standard rent" means —

" (a) if the rent has been fixed by the Board prior to the commencement of this Ordinance, the rent so fixed

(b) if the rent has not been fixed by the Board prior to the commencement of this Ordinance, the rent of the premises as at the 1st day of August, 1939; or in the case of premises which were then unlet, unoccupied or unbuilt, the rent at which the premises were first let after the 1st day of August, 1939."

Counsel for the first defendant company submitted that the standard rent in the present case must be the rent payable under the letting current on the 1st August 1939 at a rent provided for under the lease which was current on the 1st August 1939, that is to say, a progressive rent. In support of his argument counsel for the first defendant company cited *Woozley v. Woodall Smith*[1], the headnote of which reads as follows:

By s.12(1)(a) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by the Rent and Mortgage Interest Restrictions Act, 1939, sched. I, it is provided: "The expression 'standard rent' means the rent at which the dwelling-house was let on Sept. 1, 1939, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in the case of a dwelling-house which was first let after the said Sept. 1, 1939, the rent at which it was first let: Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent; and, where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent." By s.12(7) it is provided: "Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy nor to any mortgage by the landlord from whom the tenancy is held of his interest in the dwelling-house, and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed."

The landlord of a dwelling-house to which the Rent Acts applied held the premises under a lease for a term of twenty-nine years from Sept. 29, 1936, at a progressive rent of £5 a year until Sept. 29, 1944, and £65 a year thereafter. On Sept. 1, 1939, the rateable value of the premises was £38 a year. On Nov. 14, 1947, the landlord granted to the tenant an under-lease of the premises for the remainder of the term less three days at a rent of £225 a year. On an application by the tenant to determine the standard rent of the premises,

Held: (i) the words "rent payable in respect of any tenancy" in s.12(7), meant the rent payable under the provisions of the tenancy in force on Sept. 1, 1939, and not the rent actually payable on that date; on the true construction of the proviso to s.12(1)(a), read with the substantive provisions of that paragraph, where a dwelling-house was let at a progressive rent the rent at which it was let at Sept. 1, 1939, must be taken to be "the maximum rent payable under such tenancy agreement"; and, therefore, the rent payable on Sept. 1, 1939, in respect of the tenancy in the present case must be taken to be £65 and so not less than two-thirds of the rateable value of the dwelling-house, with the result that s.12(7) did not exclude the operation of the Rent Acts and under s.12(1)(a) the standard rent was £65.

(ii) whether the word "where" in s.12(7) meant "in cases in which" or "if and so long as" (a construction to which the Court inclined) the effect of the fact that the rent payable in respect of the tenancy on Sept. 1, 1939, was less than two-thirds of the rateable value was then to exclude the tenancy from the provisions of the Rent Acts, but when the rent rose to £65 the lease came within the provisions of s.12(1)(a) as a first letting after Sept. 1, 1939, and, again, the standard rent would be £65.

There are several observations to be made on this case. First, the language of the English Act is quite different from that of the Ordinance. Secondly, the English Act refers to progressive rents while there is no such reference in the Ordinance. Thirdly, there is a proviso to section 12 (1) (a) of the English Act while there is no proviso in the relevant part of the Ordinance. Fourthly, in the judgment of the Court of Appeal, it is in effect stated in at least three passages that, in order to construe the relevant statutory provision, the proviso to section 12 (1) (a) of the English Act has to be read together with one or other or both of the relevant sub-sections.

Fifthly, in the case of a lease at a progressive rent the English Act provides a method for ascertaining the standard rent; in certain cases the maximum rent payable under the lease is to be taken to be the standard rent. In the Ordinance no such provision can be found; it would be impossible to say which of the graduated sums is to be taken to be the standard rent in the Colony. All these considerations lead me to the conclusion that the case of *Woozley v. Woodall Smith, supra,* is of very little assistance in the decision of the present case.

In my opinion, upon a true construction of the definition of "standard rent" in the Ordinance, the rent of the premises in the present case as at the 1st day of August 1939 was $500 per mensem. It follows, therefore, in my judgment, that the standard rent of the premises is $500 per mensem. Applying the provisions of section 3 (1) to the facts of the case it is clear that the first defendant company have received as rent certain sums of money in excess of the amount which they could lawfully receive, being sums in excess of the standard rent of $500 per mensem.

It was contended by counsel for the first defendant company that in any event his clients were entitled to the twenty-five per cent increase of rent under section 7 (1) (c) of the Ordinance. Such an increase can be lawfully received only when a new tenancy at an increased rental has been created. And, before the new tenancy can be created, the existing tenancy must be determined according to law. As there is no evidence that the existing tenancy in this case has been determined, the first defendant company cannot, in my opinion, avail themselves of the provisions of section 7 (1) (c) of the Ordinance.

There is one further submission to be dealt with. It was submitted by counsel for the defendants that by reason of the enactment of Ordinance No. 35 of 1939 the contract of lease was frustrated. In my opinion the short answer to this argument is that by enacting Ordinance No. 30 of 1941, which brought in the proviso to section 6 (1) of Ordinance No. 35 of 1939, the legislature was recognising the efficacy of written tenancy agreements or leases executed before the 1st August 1939 which provided for periodical or progressive increases of rent. It is therefore, in my opinion, impossible to say that the contract of lease in this case was frustrated.

It has been laid down that the granting of a declaration is a matter of discretion. In my opinion this is a clear case for the exercise of the Court's discretion in favour of the plaintiff company. There will therefore be a declaration as prayed in the statement of claim. The first defendant company will refund to the plaintiff company all sums which they have received in excess of the standard rent subject to the claim to a portion of such sums being barred by the Limitation Ordinance.

It should be stated that counterclaims were filed by the first defendant company and the second defendant. These counterclaims were not proceeded with and they are accordingly dismissed.

As to the costs of both the claim and counterclaim, the first defendant company will pay the plaintiff company's costs out of the estate of Tan Tye deceased, while the second defendant will pay to the plaintiff company such costs as have been occasioned by his having been joined as a party to the action. The first defendant company's costs will be paid out of the estate of Tan Tye deceased, while the second defendant will bear his own costs.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Rodyk & Davidson; Hilborne & Co.*

MUNAH BINTI ALI v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Whyatt C.J. (S) and Good J.) March 14, 1958]

[Ipoh — F.M. Criminal Reference No. 4 of 1957]

Penal Code ss.312 and 511 — Attempt to cause miscarriage — Whether necessary for Court to be satisfied that the woman is with child before the Court proceeds to convict.

The question for decision in this reference was whether in a charge of attempting to cause a woman to have a miscarriage contrary to sections 312 and 511 of the Penal Code it was necessary for the Court to be satisfied that the woman was with child before the Court proceeded to convict.

Held (Whyatt C.J. (S) and Good J., Thomson C.J. dissenting): in a charge of attempting to cause a woman to have a miscarriage it is not necessary for the Court to be satisfied that the woman is with child before the Court proceeds to convict.

Observations on "attempt" to commit an offence.

Cases referred to:—

(1) *R. v. Rings & Ors.*, 17 Cox C.C. 491.

(2) *R. v. Collins*, 9 Cox C.C. 497; L. & C. 471, 475.